

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES HANNA,

Petitioner,

-vs-

TODD ISHEE, Warden,

Respondent.

:

Case No. 1:03-cv-801

:

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

:

DECISION AND ORDER DENYING MOTION IN LIMINE

This capital habeas corpus case is before the Court on Respondent's Motion in Limine to exclude the proposed evidentiary hearing testimony of Steve Martin (Doc. No. 80) which Petitioner opposes (Doc. No. 84).

The ultimate test for admission of expert testimony is whether it will be helpful to the trier of fact. In this case, that will be the undersigned with de novo review by Judge Rose. The Court agrees with Respondent that Mr. Martin cannot satisfy the standards of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and that his expertise is limited to opinions based on his experience in corrections administration and not, e.g., psychology. That said, his opinion appears to be admissible under *Kumho Tire Co. v. Carmichael*, 526 U.S.137 (1999), and may be useful to the Court. Because the objections made by Respondent go largely to the weight of the testimony and there is no possibility of jury confusion in this case, the Motion in Limine is denied.

October 25, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge